

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

Crl.Rev.Pet.No. 544 of 1999()

CC.157/1993 of JUDL. MAGISTRATE OF FIRST CLASS COURT,
IRINJALAKUDA
CRA.185/1997 of ADDL. SESSIONS COURT, THRISSUR
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REVN. PETITIONER/APPELLANT/ACCUSED:

JAIN, S/o. CHULLIPARAMBIL NARAYANAN,
NANDIPULAM, THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 02/04/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Crl.Rev.Pet.No. 544 of 1999()

:2:

ORDER ON C.M.P NO. 2377 OF 1999 IN CRRP NO. 544 OF 1999

DISMISSED

2/4/2007

Sd/- K.R.UDAYABHANU,JUDGE

TRUE COPY

P.A.TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.No.544 of 1999

Dated this the 2nd day of April, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 379 IPC and sentenced to undergo R.I. for eighteen months.

2. The prosecution case is that on 28.5.1993, at about 9.30 p.m., the accused who came in a motor cycle, while PW1, the defacto complainant, was walking through the road, and forcibly took away a sum of Rs.6,250/- kept by PW1 in a bag placed inside his vest. The evidence adduced in the matter consisted of the testimony of Pws' 1 to 12, Exts. P1 to P5 and MO1 series currency notes for a sum of Rs.4,500/-. It is the contention of the counsel for the revision petitioner that there is a delay of 5 days in lodging the FIS and consequent registration of the crime. The same has not been properly explained. It is also pointed out that the identity of the accused has not been properly established. Apart from the evidence of PW1, the defacto complainant, the only other evidence in the matter is

Section 27 recovery of Rs.4,500/- from PW4. PW4 as well as PW5, the witnesses to the recovery of the amount turned hostile. It is brought out that the accused is a person conducting a canteen in the cinema theatre owned by PW4. The explanation for the delay in complaining to the police, stated by PW1 is that his wife is suffering from hyper tension and hence, he did not report the matter immediately to the police. I find that the delay to initiate the proceedings has not been explained properly.

3. So far as the identity of the accused is concerned the evidence is as follows: It is the version of PW3, who according to the prosecution has allegedly witnessed the incident while he was passing through the alleged scene of occurrence riding a bicycle, that PW1 caught hold on him on suspicion that it was he who committed the robbery. It was the people who came there got him disengaged him from the hands of PW1. PW1 has also stated that he was under the impression that it was PW3 who forcibly took the money. Suggestion to PW1 is that he caught hold of PW3 under the impression that it is PW3 who took away the money. He has stated that he thought that it is the

accused who took away the money. Also no evidence has been adduced by the prosecution to establish that there was sufficient light at the place so that PW1 could identify the accused. In view of the fact that the delay has not been explained properly and that the identity of the accused has not been convincingly proved, it cannot be said that the prosecution has proved the charge beyond reasonable doubt. In the circumstances, I find that the accused is entitled benefit of doubt. In the result, the accused acquitted.

The revision petition is allowed.

**K.R.UDAYABHANU,
JUDGE**

csl